

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant left work on the 9th, and drove two and a half hours to his mother's home. Claimant stayed at his mother's house until Sunday morning. Sometime Sunday morning, claimant was filling a high pressure air tank for his mother. While bending over, claimant experienced a sudden onset of pain which required that he seek immediate medical attention. Claimant telephoned Kenneth Gates, owner of respondent business, and advised him that he had twisted his back. However, Mr. Gates testified that, while claimant commented about injuring his back, he told Mr. Gates that he had injured it while moving an air compressor or air conditioner at his mother's house. Claimant also told Dorothy Ferguson, a part-time worker for respondent, that he injured his back moving an air conditioner for his mother.

Claimant denied these allegations. However, medical reports from claimant's medical treatment on that Sunday note that claimant injured himself while filling an air bubble for his mother.

The decision in this matter hinges substantially on the credibility of the various witnesses. The Administrative Law Judge, after considering claimant's testimony and that of the other witnesses, apparently found claimant's credibility to be lacking. The Administrative Law Judge found that claimant had failed to prove by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged. The Appeals Board finds the evidence in the record to support that decision and affirms same.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated September 5, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

c: Timothy A. Emerson, Wichita, KS
Vincent A. Burnett, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director